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10/779,402	02/13/2004	Steven J. McCarthy	ID-504 (80226)	2799
89137	7590	05/09/2011	EXAMINER	
Allen, Dyer, Doppelt, Milbrath & Gilchrist - RIM 255 S. Orange Avenue Suite 1401 Orlando, FL 32801			NGUYEN, MINH CHAU	
			ART UNIT	PAPER NUMBER
			2442	
			NOTIFICATION DATE	DELIVERY MODE
			05/09/2011	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/779,402

Applicant(s)

MCCARTHY ET AL.

Examiner

MINH-CHAU NGUYEN

Art Unit

2442

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1-3, 5, 6, 8-10, 12, 14, 15, 17, 18, 20 and 22-28.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/MINH-CHAU NGUYEN/  
Examiner, Art Unit 2442

Continuation of 11. does NOT place the application in condition for allowance because: the claims are still met by the cited prior arts. The Examiner will respond to arguments that listed in the Remarks of the Amendment After Final (please see below for details).

**Argument:**

Applicants submits: "Even the combination of Albert et al. and Dar, however, fails to disclose a dispatcher for collecting the commonly scaled weighted health metrics from the servers by polling the servers for the weighted health metrics and distributing jobs to the servers based thereon, as recited in independent Claim 1, for example. The Examiner asserted the recitation in col. 32, lines, 30-31 of Albert et al. of "Next... the service manager retrieves the real machine weights for the virtual machine" to disclose polling the servers for the weighted health metrics, but is mistaken.

As explained in Col. 32, lines 38-40 of Albert et al., "[t]he real machine is selected by the service manager using the weights retrieved from its database for the virtual machine." That is, the reference in the portion cited by the Examiner to retrieving the real machine weights is referring to the service manager retrieving the weights from its own database and not the real machines.

In fact, the real machines of Albert et al. all send their feedback messages to a given real machine, which in turn sends all the feedback messages to the service manager, as explained in col. 29, lines 49-52. Therefore, rather than the service manager of Albert et al. polling the real machines for the feedback messages, the given real machine discussed above sends the feedback messages to the service manager, absent any sort of polling.

Furthermore, it is further noted that independent Claim 1 recites a dispatcher for collecting the commonly scaled weighted health metrics from the servers. In Albert et al. the feedback messages from the various real machines are all sent to a given real machine, and that one given real machine sends all the feedback messages to the service manager. This is not collecting commonly scaled weighted health metrics from of a plurality of servers; it is collecting feedback messages from a single real machine of a plurality thereof. " [Remarks, pages 11-12]

In response to Applicant's assertion that "the real machine is selected by the service manager using the weights retrieved from its database for the virtual machine." That is, the reference in the portion cited by the Examiner to retrieving the real machine weights is referring to the service manager retrieving the weights from its own database and not the real machines", the Examiner disagrees.

Albert et al. discloses: "each real machine also includes an interface that allows it send feedback information to service manager that tells service manager 1140 how busy the real machine is handling connections for various virtual machines...Each real machine may have its own connection to service manager 1140 and may independently send feedback messages to service manger 1140" (see Albert, col. 29, lines 25-39); and "each real machine independently sends messages to service manager 1140 over a feedback message bus. Real machines 1102, 1104, and 1106 each are connected to a feedback message bus 1110 that is connected to service manager 1140" (see Albert, col. 29, lines 44-48 and figure 11B); and "Service manager 1140 includes an interface that receives the feedback messages from the real machines" (see col. 29, lines 63-65) ; and "When the service manager receives a feedback packet from a server, the service manager updates a database of available hosts for each different virtual address, port and protocol that is being supported by the service manager. FIG. 14 is a diagram illustrating a data structure 1400 for a first virtual machine port and protocol that includes all of the servers used to implement that virtual machine port and protocol along with a weight for each server. The weight is received as part of a feedback packet. A second data structure 1402 stores the identity of the servers and their respective weights for a second virtual machine port and protocol...a process implemented on a service manager for updating the data structures illustrated in FIG. 14 upon receipt of a feedback packet..., the service manager receives an update message from a server..." (see Albert, col. 31, lines 49-67); and "the service manager receives feedback packets from each server that include weights for the server that control the selection of that server for handling connections to a virtual machine implemented on the server...the service manager retrieves the real machine weights for the virtual machine. The real machine weights represent the capacity of each real machine to handle connections for that specific virtual machine...The real machine is selected by the service manager using the weights retrieved from its database for the virtual machine" (see Albert, col. 32, lines 14-40).

According to these citations, the Examiner asserts that Albert does disclose the service manager receives the weights of the real machines (or servers), which are included in the feedback messages, from each real machine or server independently. While the service manager receives the feedback messages from the real machines, the weights data are stored in the database. Thus, the database is a data structure to kept or collect the weights data. Therefore, in other words, the retrieving real machines (or servers) weights is done by the service manager using its database, but the retrieved real machines weights are actually received from the real machines. (i)

In response to Applicant's assertion that " In fact, the real machines of Albert et al. all send their feedback messages to a given real machine, which in turn sends all the feedback messages to the service manager, as explained in col. 29, lines 49-52. Therefore, rather than the service manager of Albert et al. polling the real machines for the feedback messages, the given real machine discussed above sends the feedback messages to the service manager, absent any sort of polling", the Examiner disagrees.

Albert et al. discloses: "In addition, different schemes may be used for sending feedback messages to service manager 1140...Alternatively, the real machines may be grouped together with one real machine designated as a representative real machine..."

(see Albert, col. 29, lines 34-43); and "FIG. 13 is a diagram illustrating the structure of a feedback message sent from a server to the service manager. The feedback message may be from an individual server or may be from a representative server that collects server feedback messages...Normalized weights may also be provided by the servers themselves" (see Alberts, col. 31, lines 44). According to these citations, the Examiner asserts that Alber does disclose the real machines all send their feedback messages to the service manager. Moreover, Alberts discloses the real machines send their feedback messages to the service manager via a representative real machine, but this scheme is in another or alternative embodiment, and it is not necessary. (ii)

In response to Applicant's assertion that "Furthermore, it is further noted that independent Claim 1 recites a dispatcher for collecting the commonly scaled weighted health metrics from the servers. In Albert et al. the feedback messages from the various real machines are all sent to a given real machine, and that one given real machine sends all the feedback messages to the service manager. This is not collecting commonly scaled weighted health metrics from of a plurality of servers; it is collecting feedback messages from a single real machine of a plurality thereof", the Examiner disagrees.

Albert et al. discloses: "In addition, different schemes may be used for sending feedback messages to service manager 1140...Alternatively, the real machines may be grouped together with one real machine designated as a representative real machine..." (see Albert, col. 29, lines 34-43); and "FIG. 13 is a diagram illustrating the structure of a feedback message sent from a server to the service manager. The feedback message may be from an individual server or may be from a representative server that collects server feedback messages...Normalized weights may also be provided by the servers themselves" (see Alberts, col. 31, lines 44). Again, according to these citations, the Examiner asserts that Alber does disclose the all real machines (or a plurality of real machines (or servers) send their feedback messages to the service manager. In the other words, the service manager collects the weights which are from the plurality of the real machines. Moreover, Alberts discloses the real machines send their feedback messages to the service manager via a representative real machine, but this scheme is in another or alternative embodiment, and it is not necessary. (iii)

Finally, based on the responses (i)-(iii) above, the Examiner asserts that the claim 1 is not in condition for allowance. On this basis, the rejection under 35 U.S.C. 103 STANDS.

Examiner's notes: Examiner has cited particular columns and line numbers or paragraph numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in their entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. The entire reference is considered to provide disclosure relating to the claimed invention

Conclusion: further discussion will be provided in due course.